

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. _____

STATE OF INDIANA,)

Plaintiff,)

v.)

JAMES L. SHAFER,)
individually and doing business as)
INDY MUSTANG PERFORMANCE,)
MONTGOMERY DEAN GLOVER,)
Individually and doing business as)
INDY MUSTANG UNLIMITED, and)
INDY MUSTANG UNLIMITED, INC.)

Defendants.)

49C010510PL0038862

FILED
OCT 03 2005
Dana Ann Tolliver
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS,
CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this Complaint, the Defendant, James L. Shafer, individually and doing business as Indy Mustang Performance, engaged in the sale and repair of automobile engines and had a principal place of business in Marion County, located at 675 East Murry Street, Indianapolis, Indiana, 46227.

15-26990

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PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. At all times relevant to this Complaint, the Defendant, James L. Shafer, individually and doing business as Indy Mustang Performance, engaged in the sale and repair of automobile engines and had a principal place of business in Marion County, located at 675 East Murry Street, Indianapolis, Indiana, 46227.

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3. At all times relevant to this Complaint, the Defendant, Montgomery Dean Glover, was engaged in the sale and repair of automobile engines and operated from his principal place of business in Marion County, located at 675 East Murry Street, Indianapolis, Indiana, 46227.

4. At all times relevant to this Complaint, the Defendant, Indy Mustang Unlimited Incorporated, was a for-profit domestic corporation created on May 9, 2005 engaged in the sale and repair of automobile engines, and operated from its principal place of business in Marion County, located at 675 East Murry Street, Indianapolis, Indiana, 46227.

FACTS

A. Background of Indy Mustang Performance and Indy Mustang Unlimited.

5. Since at least February 18, 2004, the Defendant, James L. Shafer, has offered items for sale via the Internet.

6. On April 18, 2005, the Defendant, James L. Shafer, and the Defendant, Montgomery Dean Glover, entered into a contract for the purchase and sale of the assets of Shafer's business, Indy Performance Mustang, for a price of Ten Dollars (\$10.00) and other valuable consideration.

7. As part of this contract, the Defendant, Montgomery Dean Glover, acquired many of the assets of Indy Performance Mustang from the Defendant, James L. Shafer's, business, including equipment and leasehold improvements in a building located at 675, 681, and 685 East Murry Street, the rights to use the names Indy Mustang Performance, JFK Engine Builders, all web domains associated with Indy Mustang Performance or JFK Engine Builders, the telephone number being used at the Murry

Street address, all financial holdings, the use of the Retail Merchant License, and all inventory on hand.

8. Upon information and belief, the consideration given for these assets was inadequate, as the total value of the assets purchased by the Defendant, Montgomery Dean Glover, from the Defendant, James L. Shafer, likely exceeds Ten Dollars (\$10.00).

9. Since at least April 18, 2005, the Defendant, Montgomery Dean Glover, had operated the former Indy Performance Mustang as Indy Mustang Unlimited.

10. Subsequently, Indy Mustang Unlimited became Indy Mustang Unlimited, Inc. upon its incorporation as a for-profit domestic corporation on May 9, 2005.

11. Since at least June 28, 2005, the Defendant, James L. Shafer, has posted a notice on his website stating, "Indy Performance Mustang has closed its doors. The new company owned by Monty Glover is operating under the name of Indy Mustang Unlimited – they have all of the assets and equipment and parts that were owned by Indy Mustang Performance."

12. Upon information and belief, many of the assets, equipment, and parts sold by Mr. Shafer to Mr. Glover were items either owned by consumers, or otherwise previously purchased and paid for by consumers.

B. Allegations Related to Consumer Garret Reed's Transaction.

13. On or about November 28, 2003, the Defendant, James L. Shafer, entered into a contract via the Internet with Garret Reed ("Reed") of Safety Harbor, Florida, wherein the Defendant represented he would build an automobile engine for Three Thousand Five Hundred and Forty-One Dollars and Thirty-Two cents (\$3,541.32), which Reed paid.

14. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of the sale he would deliver the engine within a reasonable period of time.

15. The Defendant, James L. Shafer, has yet to either ship the engine, or to provide a refund to Reed.

C. Allegations Related to Consumer Rod McAfee's Transaction.

16. On or about February 18, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet with Rod McAfee ("McAfee") of McKinney, Texas, wherein the Defendant represented he would build an automobile engine for McAfee for Two Thousand Eight Hundred Dollars (\$2,800.00), which McAfee paid.

17. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of the sale he would deliver the engine within a reasonable period of time.

18. The Defendant, James L. Shafer, has yet to either ship the engine, or to provide a refund to McAfee.

D. Allegations Related to Consumer Lawrence Kinser's Transaction.

19. On or about March 14, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet and in person with Lawrence Kinser ("Kinser") of Valparaiso, Indiana, wherein the Defendant represented he would rebuild and overhaul an automobile engine for Kinser for Five Thousand Six Hundred and Fifty Dollars (\$5,650.00), of which Kinser paid Four Thousand Dollars (\$4,000.00) as a down payment.

20. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of the sale he would deliver the engine within a reasonable period of time.

21. The Defendant, James L. Shafer, has yet to either ship the engine, or to provide a refund to Kinser.

E. Allegations Related to Consumer Carl Fuller's Transaction.

22. On or about April 18, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet with Carl Fuller ("Fuller") of Humble, Texas, wherein the Defendant represented he would build an automobile engine for Fuller for Three Thousand Nine Hundred and Thirty Five Dollars (\$3,935.00), which Fuller paid.

23. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of sale he would deliver the engine to Fuller within a reasonable period of time.

24. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Fuller.

F. Allegations Related to Consumer Wilfredo Villamar's Transaction.

25. On or about May 15, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet with Wilfredo Villamar ("Villamar") of Salinas, California, wherein the Defendant represented he would sell an automobile engine to Villamar for One Thousand Seven Hundred and Thirty Five Dollars (\$1,735.00), which Villamar paid.

26. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of the sale he would deliver the engine to Villamar within a reasonable period of time.

27. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Villamar.

G. Allegations Related to Consumer Andrew Rompalski's Transaction.

28. On or about July 1, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet with Andrew Rompalski ("Rompalski") of Woodbridge, Virginia, wherein the Defendant represented he would build an automobile engine for Rompalski for One Thousand Six Hundred and Seventy-Five Dollars (\$1,675.00), which Rompalski paid.

29. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of the sale he would deliver the engine to Rompalski within a reasonable period of time.

30. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Rompalski.

H. Allegations Related to Consumer Phillip Jackson's Transaction.

31. On or about May 15, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet with Phillip Jackson ("Jackson") of Eufaula, Alabama, wherein the Defendant represented he would build an automobile engine for Jackson for One Thousand Six Hundred and Ninety-Nine Dollars (\$1,699.00), which Jackson paid.

32. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of the sale he would deliver the engine to Jackson within a reasonable period of time.

33. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Jackson.

I. Allegations Related to Consumer Chris Kopriva's Transaction.

34. On or about August 27, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet with Chris Kopriva ("Kopriva") of San Diego, California, wherein the Defendant represented he would sell an automobile engine and transmission to Jackson, as well as test the engine, for Three Thousand Eight Hundred Dollars (\$3,800.00), which Kopriva paid.

35. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of the sale he would deliver the engine and transmission to Kopriva within a reasonable period of time.

36. The Defendant, James L. Shafer, has yet to either deliver the engine or transmission, or to provide a refund to Kopriva.

J. Allegations Related to Consumer Dan Schultz's Transaction.

37. On or about October 18, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet with Dan Schultz ("Schultz") of Oswego, Illinois, wherein the Defendant represented he would build an automobile engine for Shultz for Two Thousand Five Hundred Ninety-Nine Dollars (\$2,599.00), of which Schultz paid One Thousand Five Hundred Dollars (\$1,500.00) as a down payment.

38. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of the sale he would deliver the engine to Schultz within a reasonable period of time.

39. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Schultz.

K. Allegations Related to Consumer Stephen Iglesias' Transaction.

40. On or about October 20, 2004, the Defendant, James L. Shafer, entered into a contract via the Internet with Stephen Iglesias ("Iglesias") of Tulsa, Oklahoma, wherein the Defendant represented he would build an automobile engine for Iglesias for One Thousand Eight Hundred and Forty Six Dollars (\$1,846.80), which Iglesias paid.

41. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of sale he would deliver the engine to Iglesias within a reasonable period of time.

42. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Iglesias.

L. Allegations Related to Consumer Joseph Shores' Transaction.

43. On or about January 2, 2005, the Defendant, James L. Shafer, entered into a contract via the Internet with Joseph Shores ("Shores") of Gaithersburg, Maryland, wherein the Defendant represented he would sell an automobile engine to Shores for Two Thousand Six Hundred and Fifty Dollars (\$2,650.00), which Shores paid.

44. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would deliver the engine to Shores within a reasonable period of time.

45. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Shores.

M. Allegations Related to Consumer John Strizak's Transaction.

46. On or about January 7, 2005, the Defendant, James L. Shafer, entered into a contract via the Internet with John Strizak ("Strizak") of Akron, Ohio, wherein the Defendant represented he would build an automobile engine for Strizak for Three Thousand Dollars (\$3,000.00), of which Strizak paid One Thousand Five Hundred Dollars (\$1,500.00) as a down payment.

47. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of sale he would deliver the engine to Strizak within a reasonable period of time.

48. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Strizak.

N. Allegations Related to Consumer David Melley's Transaction.

49. On or about February 18, 2005, the Defendant, James L. Shafer, entered into a contract via the Internet with David Melley ("Melley") of Stevensville, Maryland, wherein the Defendant represented he would sell an automobile engine to Melley for Two Thousand Four Hundred Dollars (\$2,400.00), which Melley paid.

50. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of sale he would deliver the engine to Melley within a reasonable period of time.

51. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Melley.

O. Allegations Related to Consumer Bruce Christofferson's Transaction.

52. On or about March 14, 2005, the Defendant, James L. Shafer, entered into a contract via the Internet with Bruce Christofferson, ("Christofferson") of Vernal, Utah, wherein the Defendant represented he would sell an automobile engine to Christofferson for Two Thousand Six Hundred Dollars (\$2,600.00), which Christofferson paid.

53. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant, James L. Shafer, is presumed to have represented at the time of sale he would deliver the engine to Christofferson within a reasonable period of time.

54. The Defendant, James L. Shafer, has yet to either deliver the engine, or to provide a refund to Christofferson.

P. Allegations Related to Consumer Arvin Davis' Transaction.

55. On or about April 27, 2005, the Defendant, James L. Shafer, on behalf of the Defendant, Montgomery Dean Glover, entered into a contract via the Internet with Arvin Davis ("Davis"), of Beale AFB, California, wherein the Defendant represented he would sell an automobile engine to Davis for Three Thousand Four Hundred and Thirty-Seven Dollars (\$3,437.00), which Davis paid.

56. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale he would deliver the engine to Davis within a reasonable period of time.

57. After submitting a complaint to PayPal, an on-line payment service, Davis received a partial refund of One Hundred and Seventy-Five Dollars (\$175.00).

58. The Defendants have yet to either deliver the engine, or to provide a full refund to Davis.

COUNT I- VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

59. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 58 above.

60. The transactions referred to in paragraphs 13, 16, 19, 22, 25, 28, 31, 34, 37, 40, 43, 46, 49, 52, and 55 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

61. The Defendants are “suppliers” as defined by Ind. Code § 24-5-0.5-2(a)(3).

62. The Defendants’ representations to the consumers the consumers would be able to purchase the items as represented, when the Defendants knew or reasonably should have known the consumers would not receive the items as represented, as referenced in paragraphs 13, 16, 19, 22, 25, 28, 31, 34, 37, 40, 43, 46, 49, 52, and 55 are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

63. The Defendants’ representations to consumers the Defendant would deliver the items, or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced in paragraphs 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, 47, 50, 53, and 56, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

64. The Defendants' representations to the consumers they would be able to purchase the items as advertised by the Defendants, when the Defendants did not intend to sell the items as represented, as referenced in paragraphs 13, 16, 19, 22, 25, 28, 31, 34, 37, 40, 43, 46, 49, 52, and 55, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II-KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

65. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 64 above.

66. The misrepresentations and deceptive acts set forth in paragraphs 13, 14, 16, 17, 19, 20, 22, 23, 25, 26, 28, 29, 31, 32, 34, 35, 37, 38, 40, 41, 43, 44, 46, 47, 49, 50, 52, 53, 55, and 56, were committed by the Defendants with knowledge and intent to deceive.

COUNT III- LIABILITY FOR FRAUDULENT TRANSFER OF ASSETS

67. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 66 above.

68. Pursuant to Ind. Code § 32-18-2-14(1), the transfer of assets described in paragraphs 6, 7, and 8 is a fraudulent transfer of assets as to present and future creditors, as it was made by the Defendants with the intent to hinder, delay, or defraud the Defendant, James L. Shafer's, creditors.

69. Pursuant to Ind. Code § 32-18-2-14(2), the transfer of assets described in paragraphs 6, 7, and 8 is a fraudulent transfer of assets as to present and future creditors, as the Defendant, James L. Shafer, did not receive a reasonably equivalent value from the Defendant, Montgomery Dean Glover, in exchange for the transfer, and the Defendant,

James L. Shafer, reasonably should have believed he would incur debts beyond his ability to pay as the debts became due.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, James L. Shafer and Montgomery Dean Glover, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendants know or should reasonably know it does not have;
- b. representing expressly or by implication the Defendants are able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they can not; and
- c. representing expressly or by implication a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendants, if the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants, James L. Shafer and Montgomery Dean Glover, for the following relief:

- a. cancellation of the Defendant's unlawful contract with consumers, including but not limited to, all person's referenced in paragraphs 13, 16, 19, 22,

25, 28, 31, 34, 37, 40, 43, 46, 49, 52, and 55, pursuant to Ind. Code § 24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers, including but not limited to, all persons referenced in paragraphs 13, 16, 19, 22, 25, 28, 31, 34, 37, 40, 43, 46, 49, 52, and 55,, for the purchase of the Defendants' items via the Internet, in an amount to be determined at trial;

c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;

e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;

f. on Count III of the Plaintiff's complaint,

1. avoidance of the transfer of assets from the Defendant, James L.

Shafer, to the Defendant, Montgomery Dean Glover, to the extent

necessary to satisfy the Plaintiff's claims, pursuant to Ind. Code § 32-

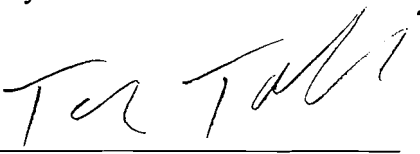
18-2-17(a)(1);

2. an attachment against the assets transferred or other property of the transferee, in accordance with the procedure prescribed by Ind. Code § 34-25-2-1, or any other applicable statute providing for attachment or other provisional remedy against debtors generally;
 3. an injunction preventing further disposition by the Defendants of the assets transferred, proceeds derived from the transfer thereof, or of other property held, pursuant to Ind. Code § 32-18-2-17(a)(3)(A);
 4. an injunction preventing further disposition by the Defendants of the assets transferred, proceeds derived from the transfer thereof, or of other property held, pursuant to Ind. Code § 32-18-2-17(a)(3)(A); and
 5. pursuant to Ind. Code § 32-18-2-17(a)(3)(B), appointment of a receiver to take charge of the assets transferred or of the property of the Defendants; and
- g. all other just and proper relief.

Respectfully Submitted,

STEVE CARTER
Indiana Attorney General
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By:


Terry Tolliver
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